

Lala Raghbir Singh - - - - - *Appellant*

v.

Seth Ram Rattan and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 14TH DECEMBER, 1942

Present at the Hearing:

LORD MACMILLAN

LORD WRIGHT

LORD PORTER

SIR GEORGE RANKIN

SIR MADHAVAN NAIR

[*Delivered by* LORD MACMILLAN]

The sole question presented for decision in this appeal is whether (1) certain shares of the Delhi Cloth and General Mills Company Limited and (2) an interest in a timber business carried on by the firm of Sultan Singh & Company were the separate self-acquired property of the late Rai Bahadur Sultan Singh or were the property of the Hindu joint family of which Sultan Singh was a member.

The question arose in consequence of a decree for Rs.24,798-4-6 and costs obtained by the respondents on 22nd August 1934 in the Court of the Subordinate Judge at Lahore against the appellant, recoverable from the estate of the late Sultan Singh, the appellant's father. The respondents on 29th November, 1934, applied in the Court of the District Judge at Delhi for execution of this decree by the attachment of a kothi or bungalow in Delhi alleged to have been owned by Sultan Singh. The application was resisted by the appellant on various grounds and appropriate issues were framed.

After taking evidence the Senior Subordinate Judge at Delhi, to whom the case had been transferred, held that the appellant and his two sons were, along with Sultan Singh until the death of the latter on 3rd June, 1930, members of a joint Hindu family; that the property sought to be attached had been acquired during the minority of Sultan Singh and his brother Multan Singh by the District Judge at Delhi, who then had the management of the family estate, with funds provided from the estate; and consequently that the property was part of the joint family estate. He further held that the appellant, during his father's lifetime, had been adopted by the widow of his uncle Multan Singh and had thereby ceased in law to be the son of Sultan Singh, with the result that there was no liability incumbent on him under section 53 of the Code of Civil Procedure for his natural father's debts. On these findings the Subordinate Judge held that the kothi was not liable to attachment and sale and struck the execution off the file.

The respondents appealed to the High Court at Lahore and the appeal came before Dalip Singh, J. who agreed in effect with the findings in fact of the Subordinate Judge. But he nevertheless did not dismiss the appeal, which would seem to have been the appropriate course. He held that, in view of the pleadings and evidence, the question should be investigated whether Sultan Singh owned at his death any separate property, apart from the specific property which the respondents had sought and failed to attach. He accordingly framed a general issue raising this question

and remanded to the Subordinate Judge to take evidence and report his opinion thereon. At the same time he held it clear that "there was a nucleus of joint Hindu family property" and stated that "all acquisitions of property must in the absence of evidence to the contrary be held to be joint Hindu family property, unless shown to be a separate acquisition."

The Subordinate Judge, in pursuance of the remand to him, heard further evidence and on 14th March, 1938, reported that in his opinion the respondents had failed to prove that Sultan Singh had left any separate self-acquired property on his decease in the hands of the appellant. In particular, he held that the respondents had failed to prove that either the shares in the Delhi Cloth and General Mills Company or the interest in the timber business, which have formed the subject matter of debate before their Lordships, were separate property of the late Sultan Singh.

The case having returned to Dalip Singh, J., that learned Judge expressed his general agreement with the findings of the Subordinate Judge but differed from him in two instances in which it appeared to him that the respondents had succeeded in discharging the onus which lay upon them, namely, with regard to the Delhi shares and to the interest in the timber business. He decided that 140 of the shares in the Delhi company which stood in the name of Sultan Singh at his death and his interest in the timber business were his separate property and that the appellant was liable to account therefor to the respondents in satisfaction of their judgment debt.

Against this decision the appellant presented a Letters Patent appeal which was dismissed by Adamson and Ram Lall, JJ. without reasons assigned. It is to be regretted that their Lordships have not the assistance of their views, particularly in a case in which the judgment of the Court of first instance was reversed. A petition for leave to appeal to His Majesty in Council was refused by the same learned Judges, but the appellant subsequently obtained special leave to appeal on the advice of this Board.

Before their Lordships proceed to discuss the two items in dispute; it is important to state that it was common ground before them that Sultan Singh and his brother Multan Singh were members of a joint Hindu family of considerable wealth of which the appellant, as the son of Sultan Singh and subsequently by adoption the son of Multan Singh, and the appellant's two sons in due course became members. Sultan Singh held the position of karta or manager of the joint family property. The finances of the family were throughout managed by a family firm known as Sheo Singh Rai-Nihal Singh which conducted an ancestral banking business. A number of extracts from the books of this firm have been produced showing transactions in which it was concerned.

With regard to the shares in the Delhi company, it was agreed that 100 shares were originally purchased with money provided by the family firm and were consequently joint property. Both the Subordinate Judge and Dalip Singh, J. state that the family parted with 32 of these shares, leaving them with 68. This finding is evidently based solely on an entry extracted from the books of the family firm, for there is no oral evidence on the subject and no relative records have been produced from the Share or Transfer Registers of the Company. The entry bears that there was "credited to Lala Sri Krishan Das" Rs.10720, being "sale proceeds of 32 shares of the General Cloth Mills Company." Their Lordships are not satisfied as to the correctness of the interpretation placed upon this ambiguous entry in the Courts below. If it is the record of a sale it is difficult to see why the proceeds should be credited to Lala Sri Krishan Das. Another entry vouches the purchase from the same party of 68 shares and it may well be that the entry relating to the 32 shares, rightly read, records the purchase of the 32 shares which with the 68 made up the total holding of 100. No other entry is produced showing how the holding of 100 shares was acquired. In the view which their Lordships take, however, it is not necessary to pronounce upon the interpretation of the entry in question. The only two subsequent facts established with regard to the shares are that they were each split into 10 shares and that at Sultan Singh's death the holding standing in his name was 860. Mr. Justice Dalip Singh, having held that 32 of the original 100 shares had been sold, being the equivalent of 320 of the split shares, subtracts the latter number from

1,000, leaving 680 shares. He then says that the difference between the 860 shares standing in Sultan Singh's name at his death and the 680 shares which were all that were left of the original holding, a difference which he inadvertently states to be 140 instead of 180 shares, must have been bought by Sultan Singh on his own account and must be held to be his separate property. Their Lordships do not agree with this inference. The only transactions in shares of the Delhi company of which there is any evidence, namely those recorded in the entries produced, are transactions of the family and there is no evidence that Sultan Singh ever acquired any shares for himself. It is true that there is nothing to show how the holding came to be 860 shares at Sultan Singh's death. There may well have been other transactions with the family funds in the company's shares which would have been shown in the company's share and transfer registers had they been searched. The entries showing the receipt of dividends by the family firm do not enable the number of shares held to be ascertained. The mere fact that if 32 of the original 100 shares were sold there would only be 680 of the split shares left whereas there were 860 at Sultan Singh's death affords in their Lordships' view no adequate justification for the inference that 180 shares were acquired by Sultan Singh as his separate property. The family firm admittedly had dealings in the company's shares and in the absence of evidence, to the contrary there is no adequate reason for attributing 680 shares to the family and 180 to Sultan Singh individually. Their Lordships agree with the Subordinate Judge that the respondents have failed to discharge the onus upon them of proving that any of the 860 shares in the Delhi company were the separate property of Sultan Singh.

With regard to the timber business, it appears that this concern was started and carried on by Sultan Singh in partnership with one Lala Mohan Lal under the firm name of Sultan Singh & Company at various places including Chamba, Kulu and Simla. There is no presumption that a new business carried on by a member of a joint family in partnership with a stranger is joint family business. It may be or it may not be. It is a matter for evidence. In the present instance it is clear that the timber business was financed from the family funds. The evidence of Lala Janki Parshad, who was for forty-five years in the service of the family firm of Sheo Singh Rainihal Singh, and kept its accounts, is that the money invested in the timber business was obtained from the family funds. The entries from the books of the family firm are not very clear or easy to understand. The respondents point to entries of interest received by the family firm as indicating that Sultan Singh had merely obtained a loan from the family funds for the purpose of a business of his own. But if the family firm were merely creditors of Sultan Singh for the amount of such a loan, the entries in the books of the family firm would not have recorded, as they do, detailed transactions relating to the conduct of the timber business under the headings of Kulu and Chamba and certainly would not have contained, as they do in the case of Kulu, an item of "profit for 5 years." The fact that transactions of the timber business were entered in the books of the family firm and blended with their accounts indicates that Sultan Singh treated the business as one in which the family was interested not merely in the capacity of creditors for a loan, and that he did not regard his interest in the business as his separate property. Their Lordships on this branch of the case also find themselves in agreement with the conclusion of the Subordinate Judge that Sultan Singh's interest in the timber business is not proved to have been his separate property. Such evidence as there is points for the most part in an opposite direction.

Their Lordships will accordingly humbly advise His Majesty that this appeal should be allowed; that the order dated 5th October, 1938, of the High Court at Lahore and the order of Dalip Singh J. of 12th July, 1938, should be recalled; and that the order of the Senior Subordinate Judge of Delhi of 12th March, 1937, should be restored. The respondents will pay the costs of the appellant in the present appeal and also those incurred by him in the Courts below subsequent to the order of the Senior Subordinate Judge of Delhi of 12th March, 1937.

In the Privy Council

LALA RAGHIB SINGH

v.

SETH RAM RATTAN AND OTHERS

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the appellant are not agricultural income received by the appellant, and the question of law referred to the Court should be answered in the negative. Their Lordships desire to add that a different question might have arisen if the appellant's remuneration had been by way of a fractional part of the income of the wakf estate, or by a percentage commission. That case may be considered if, and when, it arises, and their Lordships express no opinion thereon.

Accordingly, their Lordships will humbly advise His Majesty that the judgment of the High Court should be affirmed, and that the appeal should be dismissed with costs.

In the Privy Council

THE HONOURABLE NAWAB HABIBULLA

v.

THE COMMISSIONER OF INCOME-TAX,
BENGAL

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